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October 21, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

RE: *Protecting the Privacy of Customers of Broadband,* WC Docket No. 16-106

Dear Ms. Dortch:

On Thursday, October 20th,[1] I spoke briefly by telephone with Travis Litman, Commissioner Rosenworcel's Senior Legal Advisor, to discuss matters in the above-captioned docket.

I reiterated the view (previously expressed by Free Press[2] and dozens of other privacy advocates and media justice organizations[3]) that to the extent they suggest treating certain types of content as "non-sensitive" under the forthcoming rules, several broadband providers' proposals are completely unworkable and unacceptable. Specifically, as stated succinctly in a filing made last week by T-Mobile,[4] providers argue that web-browsing history and visits to certain URLs might be considered non-sensitive – and thus made subject to weaker consent requirements and privacy protections. This is infeasible at best, not to mention antithetical to the very notion of the common carrier safeguards now rightly applied to broadband internet access service.

While many providers and their hired experts have suggested to the Commission that all players in the so-called internet ecosystem be made subject to the same rules, this notion doesn't hold water once we understand what it would mean here. The fact that the FTC might apply different levels of protection to websites operated by companies in different industries is one thing. There are several sector-specific privacy regulations outside of the internet context too, where one might expect hospitals and banks to be subject to different requirements than other commercial entities are.

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[1] This *ex parte* notification is timely filed pursuant to the requirements for presentations made on the day that the Sunshine notice is released. *See* 47 C.F.R. § 1.1206(b)(2)(iv).

[2] Free Press Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-106 (filed Oct. 7, 2016).

[3] *See, e.g.*, Letter from 18MillionRising.org *et al.*, WC Docket No. 16-106, at 4 (filed Sept. 28, 2016); Letter from American Civil Liberties Union *et al.*, WC Docket No. 16-106, at 3-4 (filed Oct. 20, 2016).

[4] T-Mobile USA, Inc., Notice of *Ex Parte* Presentation, WC Docket No. 16-106 (filed Oct. 14, 2016).

Broadband providers, on the other hand, are not just the same any other business, even within the contours of the "internet ecosystem" so frequently and blithely evoked by companies like T-Mobile and Google.[5] When such companies provide broadband internet access service, they are not just destinations on the internet. They carry all of their users' speech, and they have a unique view into everything those customers see, do, and say online. Letting these carriers access their customers' content first, and only then decide whether it is (in the provider's view) too sensitive to be accessed, would make a mockery of the carriers' duty to protect the confidentiality of all customer information.

There is no indication how T-Mobile would propose to insert itself into its customers' conversations like this. Would the company keep ever-changing lists of every website in the world, categorizing them as sensitive or non-sensitive according to the carrier's own judgment of which ones contain "health" or "financial" or "children's" information? Would it inspect the contents of each website visited in real-time for certain words and images that broadband providers find to be taboo or otherwise worthy of sensitive handling? Would all financial information be deemed sensitive, while all other shopping information is deemed non-sensitive – paying no attention to the wildly imprecise and overlapping nature of such categorical determinations?

In any case, whatever schemes they might dream up to implement such plans, it bears repeating that these decisions are not the broadband providers' to make. The Communications Act makes clear that carriers must neither interfere unreasonably with their customers' messages, nor profit from the content of those messages without consent. In other words, carriers shouldn't block our messages or read them to decide (on our behalf) whether they're really private or not.

The Commission must move ahead and adopt strong rules in this proceeding. And in no event can it heed calls to remove certain types of content, such as web browsing history or visits to particular categories of sites, from the sensitive data category suggested in the currently proposed framework.

Respectfully submitted,

Matthew F. Wood
Policy Director
Free Press

[5] *See* Google Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-106 (filed Oct. 3, 2016).